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STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD  
MOTOR VEHICLE BOARD  
**MINUTES**

The New Motor Vehicle Board held a General meeting on January 8, 2003, at the Sheraton Gateway Hotel, Los Angeles Airport, Redondo Room, 6101 West Century Boulevard, Los Angeles, California.

**2. ROLL CALL**

Frederick E. (Fritz) Hitchcock, President of the Board, called the General meeting to order at 10:00 a.m.

Present:	Robert V. Branzuela	Tom Novi
	Wendy Brogin	Executive Director
	Robert T. (Tom) Flesh	Howard Weinberg
	Frederick E. (Fritz) Hitchcock	General Counsel
	Solon Soteris	Robin Parker
	Glenn E. Stevens	Senior Staff Counsel
	David W. Wilson	Cara O'Neill-Stewart
		Staff Counsel
Absent:	Angelo Quaranta	
	Alan J. Skobin	

**3. APPROVAL OF THE MINUTES FROM THE OCTOBER 29, 2002, GENERAL MEETING, AND DECEMBER 5, 2002, SPECIAL MEETING**

Mr. Soteris moved to adopt the October 29, 2002, General Board meeting minutes. Mr. Stevens seconded the motion. The motion carried unanimously.

Mr. Flesh moved to adopt the December 5, 2002, Special Board meeting minutes. Mr. Soteris seconded the motion. The motion carried unanimously.

4. **CONSIDERATION OF PRESENTATION OF RESOLUTION TO JAMES J. RYAN, RETIRED SENIOR VICE PRESIDENT AND GENERAL MANAGER, AUTOMOTIVE OPERATIONS, WESTERN REGION, BMW OF NORTH AMERICA, LLC**

Mr. Flesh moved to present a Resolution to James Ryan, retired Senior Vice President and General Manager, Automotive Operations, Western Region, BMW North America, LLC, commemorating his contributions to the automotive industry. Mrs. Brogin seconded the motion. The motion carried unanimously.

5. **CLOSED EXECUTIVE SESSION**

Pursuant to Government Code section 11126(c)(3), Vehicle Code section 3008(a), and Title 13, California Code of Regulations, sections 581 and 588, the Board shall convene in a closed Executive Session to deliberate on the decisions to be reached upon the evidence introduced in proceedings that were conducted in accordance with Chapter 5 (commencing with § 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Mr. Stevens, Board Vice President, presided over Agenda items 5(a) and 5(b). The dealer members did not participate in these items because they involved a dispute between a franchisee and franchisor.

a. **CONSIDERATION OF PROPOSED DECISION**

FRESNO DODGE, INC., dba FRESNO DODGE v. DAIMLERCHRYSLER MOTORS CORPORATION  
Protest No. PR-1763-01

Consideration of the Administrative Law Judge's Proposed Decision, by the Public members of the Board.

Mr. Stevens informed the members and audience that the parties are attempting to settle this matter and have requested that consideration of the Proposed Decision be continued pursuant to stipulation until the March 11, 2003, General meeting. This matter was taken off the agenda.

b. **CONSIDERATION OF PROPOSED ORDER**

RDO TRUCK RIVERSIDE CO. dba RDO TRUCK CENTER v. AUTOCAR, LLC  
Protest No. PR-1830-02

Consideration of the Administrative Law Judge's Proposed Order on Motion to Dismiss or Stay Pending Arbitration, by the Public members of the Board.

Oral arguments were presented before the Public members of the Board. Halbert B. Rasmussen, Esq. and Victor P. Danhi, Esq., of Manning, Leaver, Bruder & Berberich represented Protestant. Charles Miller, Esq., of Bartko, Zankel, Tarrant & Miller represented Respondent.

Counsel for the parties stipulated to allow the Dealer members to remain in the meeting room, but they did not participate in the deliberations.

The Public members of the Board deliberated in closed Executive Session. Mr. Soteras moved to adopt the findings of the Administrative Law Judge and modify the Proposed Order as follows: The matter is stayed for six months until the September 16, 2003, General meeting pending a progress report from the parties on the status of the arbitration in Illinois including but not limited to whether a decision has been reached, whether the matter has settled, or whether the arbitration is still pending. Mr. Flesh seconded the motion. The motion carried unanimously.

6. **OPEN SESSION**

The Public members returned to Open Session. Mr. Stevens announced the decision on Agenda item 5(b).

7. **CONSIDERATION OF REQUEST THAT THE BOARD ORDER AMERICAN ISUZU MOTORS, INC. TO ISSUE AN OCCUPATIONAL LICENSING BRANCH FORM NO. OL-124, TO FLADEBOE AUTOMOTIVE, INC.**

RAY FLADEBOE LINCOLN MERCURY, INC. a California Corporation v. AMERICAN ISUZU MOTORS, INC.  
Petition No. P-449-02

Consideration of Petitioner's request that the Board issue an order directing American Isuzu Motors, Inc. to issue an Occupational Licensing Branch Form No. OL-124 approving the assignment of the Isuzu franchise to Fladeboe Automotive, Inc., by the Public members of the Board.

Mr. Stevens, Board Vice President, presided over Agenda item 7. Pursuant to stipulation of counsel for the parties, the dealer members did participate in the discussion concerning the above item but abstained from voting.

Oral arguments were presented before the Public members of the Board. Michael M. Sieving, Esq., of the Law Offices of Michael M. Sieving, represented Petitioner. Ray Fladeboe, the dealer principal, was also present. Bruce Ishimatsu, Esq., of Bryan Cave LLP, represented Respondent.

Mr. Stevens called for a motion on Petitioner's request that that Board order American Isuzu Motors, Inc. to issue an OL-124 to Fladeboe Automotive. Hearing no motion, the

request was denied.

8. **CONSIDERATION OF WHETHER TO REQUEST THE DEPARTMENT OF MOTOR VEHICLES TO WITHHOLD RENEWAL OF THE OCCUPATIONAL LICENSE OF RANSOMES AMERICA CORPORATION FOR FAILING TO PAY THE ANNUAL BOARD FEE - ADMINISTRATION COMMITTEE**

Mr. Hitchcock resumed as the presiding officer over the remaining Agenda items. The members were provided with a memorandum from Tom Novi and Robin Parker concerning Ransomes failure to pay the annual Board fee. Ms. Parker informed the members that Ransomes paid the fee on Monday, January 6, 2003. In light of Ransomes payment this matter was moot.

9. **REPORT ON THE IMPACT OF THE FEDERAL LEGISLATION THAT MAKES ARBITRATION VOLUNTARY IN DEALER-MANUFACTURER DISPUTES (HOUSE OF REPRESENTATIVES BILL 2215 (SEC. 11028)) - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Howard Weinberg concerning the federal legislation that makes arbitration voluntary in dealer-manufacturer disputes. Mr. Weinberg reported that effective November 2, 2002, all arbitration agreements in franchise agreements are subject to consent. Binding arbitration cannot be imposed. Note this is not retroactive, prospective only. This is an exception to the Federal Arbitration Act.

10. **ANNUAL REPORT CONCERNING BOARD ADOPTED POLICIES - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Tom Novi and Robin Parker concerning the annual review of Board adopted policies. Ms. Parker reported on the new policies that were approved in 2002: (1) Cara O'Neill-Stewart was appointed as a Hearing Officer for purposes of settlement; (2) the Board will begin accepting credit card payments for filing and other fees; (3) An Administrative Law Judge Guide was created; (4) the Board delegated to the staff authority to make nonsubstantive changes during the rulemaking process; (5) a Document Retention Policy was adopted; and (6) the transcript policy was revised to allow litigants and others to purchase transcripts directly from the court reporter.

11. **CONSIDERATION OF PROPOSED REVISIONS TO THE ASSIGNMENT OF CASES TO BOARD ADMINISTRATIVE LAW JUDGES - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Tom Novi and Cara O'Neill-Stewart proposing revisions to the assignment of cases to Board Administrative Law Judges. Ms. O'Neill-Stewart reported that an unequal distribution of cases occurs when a vacant ALJ position exists due to an actual hiring vacancy or extended vacation. Ms. O'Neill-Stewart proposed three alternatives: (1) hire an additional ALJ; (2) remove the vacant position

from the numerical assignment wheel and numerically reconfigure the wheel for the duration of the vacancy or absence; or (3) utilize Staff Counsel for Mandatory Settlement Conferences as needed and assign “substitute” ALJs on a rotational basis for law and motion and merits hearings. Mr. Flesh moved to adopt the third alternative on an interim basis with staff to report to the Board in six months. Mr. Soteras seconded the motion. The motion carried unanimously.

12. **CONSIDERATION OF MODIFYING THE BOARD’S PARLIAMENTARY PROCEDURES TO REFLECT THE CURRENT ORGANIZATIONAL STRUCTURE OF THE BOARD STAFF - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Tom Novi and Robin Parker proposing revisions to the Board adopted Parliamentary Procedures. Ms. Parker reported that due to changes in the Board’s organizational structure the Parliamentary Procedures were revised. Ms. Parker reported that it was not necessary to wait until the revised statutes and regulations were effective given that this is a document that dealers primarily with internal Board procedures. Ms. Parker also reported that as a result of the 1996 Performance Audit, it was not necessary to promulgate the Parliamentary Procedures as rules. Mr. Flesh moved to adopt the revised Parliamentary Procedures. Mr. Wilson seconded the motion. The motion carried unanimously.

13. **CONSIDERATION OF A PROPOSED REGULATION AMENDMENT THAT ALLOWS THE PAYMENT OF FILING FEES BY CREDIT CARD - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum and text of a proposed regulatory amendment. Ms. Parker reported that in light of the Board’s policy to allow the acceptance of credit cards for filing fees, the Board needed to revise its regulation for consistency. Mr. Stevens moved to adopt the text of the proposed regulation. Mr. Wilson seconded the motion. The motion carried unanimously.

14. **CONSIDERATION OF 2003 REVISIONS TO THE INFORMATIONAL GUIDE FOR MANUFACTURERS AND DISTRIBUTORS WHICH OUTLINES THEIR OBLIGATIONS TO PROVIDE NOTICES, SCHEDULES, AND FORMULAS MANDATED BY THE CALIFORNIA VEHICLE CODE AND CIVIL CODE TO THE NEW MOTOR VEHICLE BOARD AND/OR IMPACTED DEALERS - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum and revised Informational Guide for Manufacturers and Distributors. Ms. Parker reported that the Guide was revised to incorporate the regulation (13 CCR § 565) that establishes the timeframe and procedure for filing a request for an extension of time for a manufacturer or distributor to own or operate a dealership in preparation for sale to a successor independent franchisee. Ms. Parker informed the members that the Guide would be distributed to all manufacturers and distributors within the Board’s jurisdiction as well as their known in-house and outside legal counsel. Mr. Flesh moved to adopt the revised Guide. Mr. Soteras seconded the motion.

The motion carried unanimously.

15. **EXECUTIVE DIRECTOR'S REPORT**

- a. Administrative Matters.
- b. Status of Protests.
- c. Status of Petitions.
- d. Status of Appeals.
- e. Judicial Review.
- g. Notices Filed Pursuant to Vehicle Code Sections 3060 and 3062.
- h. Other.

Mr. Novi provided the members with a Report on Administrative Matters which identified all pending projects, the Board manager and committee assigned, estimated completion dates, and status. Mr. Novi reported that the staff was encountering difficulties in implementing the acceptance of credit cards for the payment of filing and other fees because the Master Service Agreement had not been signed. Additionally, the project to evaluate methods of filing and archiving documents had stalled due to the budget.

The members were also provided with a copy of the Executive Director's Report. Mr. Weinberg reported on the status of the *Duarte and Witting, Inc.* case which resulted in a published opinion and affirmed the Board's implicit power to dismiss protests. This opinion would also support the Board's rulemaking that seeks explicit authority to dismiss protests.

16. **2003 ELECTION OF BOARD PRESIDENT AND VICE PRESIDENT - EXECUTIVE COMMITTEE**

Mr. Hitchcock read the following statement contained in the Parliamentary Procedures concerning the election of officers:

The election of officers shall be a specific item of business on the agenda for the first General Meeting of each calendar year. At the time the matter is considered, any member may nominate any other member for the office of President and/or Vice-President. There are no restrictions on the number of members who may be nominated for either position during this process. At any time after at least one Board Member is nominated for each office, any member may move that the nomination of officers be closed. If the motion is seconded and carried by majority vote, the nominating process shall be deemed concluded. After the nominating process is concluded, the Members of the Board shall cast their vote for a nominated Member for each office. No Board Member may vote for more than one nominated Member for each office. The voting shall be done by oral poll. Any Board Member may abstain from voting for a nominated Member for either office.

Mr. Flesh moved to nominate Glenn Stevens as President. Mr. Soteras seconded the motion. Mr. Soteras moved to close the nominations, with Mr. Wilson seconding. The motions carried unanimously. Mr. Stevens abstained from voting.

Mr. Stevens moved to nominate David Wilson as Vice President. Mr. Hitchcock seconded the motion. Mr. Soteras moved to close the nominations, with Mrs. Brogin seconding. The motions carried unanimously.

Mr. Novi presented Mr. Hitchcock with a plaque from the staff in appreciation for his service as President. Mr. Hitchcock will now serve as President Emeritus.

17. **APPOINTMENT OF COMMITTEE MEMBERS TO THE ADMINISTRATION COMMITTEE, BOARD DEVELOPMENT COMMITTEE, FISCAL COMMITTEE, GOVERNMENT AND INDUSTRY AFFAIRS, AND POLICY AND PROCEDURE COMMITTEE, BY THE INCOMING BOARD PRESIDENT**

Mr. Stevens appointed the members to the committees as follows:

The Administration Committee

Chair: Robert Branzuela

Member: Alan Skobin

The Board Development Committee

Chair: Solon Soteras

Member: Tom Flesh

The Executive Committee

Chair: Glenn Stevens

Member: David Wilson

The Fiscal Committee

Chair: Angelo Quaranta

Member: Vacant

The Government and Industry Affairs Committee

Chair: Tom Flesh

Member: Vacant

The Policy and Procedure Committee

Chair: Alan Skobin

Member: Vacant

18. **ADJOURNMENT**

The outgoing members, Wendy Brogin, Fritz Hitchcock, and Solon Soteras, were thanked by the members and Tom Novi for their hard work and dedication to the Board.

Mr. Flesh moved to adjourn the meeting. Mr. Wilson seconded the motion. The motion carried unanimously.

With no further business to discuss, the meeting was adjourned at 1:40 p.m.

Submitted by

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TOM NOVI  
Executive Director

APPROVED: \_\_\_\_\_  
Glenn E. Stevens  
President  
New Motor Vehicle Board